

GOVERNMENT OF ANDHRA PRADESH
ABSTRACT

Tribal Welfare Department – Appeal petition filed by Smt Tellam Suneetha W/o Dr.K.Singaraju, against the Proceedings of the District Collector, Khammam District – under section 7(2) of The Andhra Pradesh (Scheduled Castes, Scheduled Tribes and Backward Classes) Regulation of Issue of Community Certificates Act 1993 (AP Act No. 16/1993) – Appeal allowed – Orders Issued.

SOCIAL WELFARE (CV2) DEPARTMENT

G.O.MS.NO. 32

DATED: 11.05.2011.

Read the following.

1. Proceedings of the Collector, Khammam, Rc No. D3-2373/2006 dated 01-04-2007.
2. Appeal Petition of Smt Tellam Suneetha W/o Dr.K.Singaraju, Khammam District, received through M (TW& RIAD), dated. 4-5-2007
3. Govt. Memo No. 3100/CV.2/2007, SW (CV.2) Department, dated: 18-5-2007.
4. Interim orders of High Court of A.P., Hyderabad in WP.No. 23692 of 2007, dated: 13.11.2007 and in WPMP. NO. 30849 of 2007 on 19.1.2009.
5. Govt. Memo No. 3100/CV.2/2007, SW (CV.2) Department, dated: 18-12-2007.
6. The Dist. Collector, Khammam, Rc.No. D3-2373/06, dated.19.11.2007.
7. Govt. Memo No. 3100/CV.2/2007, SW (CV.2) Department, dated: 19.3.2010.
8. From Smt. Tellam Suneetha, Pharmacist Gr-II, Letter dated 12.10.2010 and 13.12.2010.
9. Govt. Letter No. 3100/CV.2/2007, SW (CV.2) Department, dated: 03.03.2011.
10. Govt. Memo No. 3100/CV.2/2007, SW(CV.2) Department, dated. 25.03.2011.
11. Orders of High Court of A.P., Hyderabad in WP.No. 23692 of 2007, dated: 07.04.2011.
12. Interim Appeal of Smt. Tellam Suneetha W/o Dr. K. Singaraju, Dated. 16.4.2011.
13. Govt. Memo No. 3100/CV.2/2007, SW(CV.2) Department, dated. 25.4.2011.

ORDER:

In the reference 1st read above the District Collector, Khammam was issued Proceedings for cancellation of Scheduled Tribe 'Koya' caste certificate of Smt. Tellam Suneetha.

2. In the reference 2nd read above Smt Tellam Suneetha has filed appeal petition, with the following grounds against the cancellation of her Scheduled Tribe 'Koya' caste certificate by the District Collector, Khammam, vide Proceedings Rc No. D3-2373/06, dated 01-04-2007.

- a) In so far as the appellant's father community is concerned the appellant produced the certificate issued to him by the Tahsildar, Yellandu and statement of eleven elders of the Koya community of his native village, Dharmavaram, and the statement of the MLA, Yellandu who also belongs to the same community. Both these statements are based on personal knowledge and acquaintance. The scrutiny committee doubted

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the Tahsildar's certificate on the ground that it is not proper form and the respondent doubts it on the ground that the certificate says it is issued as per APPSC approved list only. When it is nobody's case that the certificate is not issued by the then Tahsildar or that it is forged or fabricated, the appellant or her late father could not have been held responsible if the certificate is not in proper form.

- b) The reference to APPSC approved list in the certificate issued by the Tahsildar, Yellandu is to the list of STs issued by the APPSC for the purpose of reservation in employment in which the community of Koya finds place. The respondent irrelevantly held that it is issued 'as per the APPSC's list is no different from the Scheduled Tribes order issued by the President of India.
- c) The respondent irrelevantly observed that the appellant did not submit any documentary evidence about her mother's caste when it is the admitted case that her mother was an orphan whose parents were not known and who was brought up in an orphanage. This observation merely goes to indicate the prejudiced mind of the respondent.
- d) When the appellant's father married an orphan in an orphanage, it is but natural that the marriage is not solemnized according to tribal customs. Regarding the observation that her marriage was solemnized according to Hindu customs and not Tribal customs, the appellant had explained that when the family of a tribal Government employee has lived outside the tribal area for many years, it may adopt some Hindu customs but the same is no ground for rejecting the Tribal status. Support of this the appellant has cited a Judgment of a Division Bench of the A.P. High Court. The respondent has not even referred to let alone discussed the Judgement.
- e) The fact that different community certificates issued by different authorities in favour of the appellant's husband have been placed on record by her is held against the appellant ignoring her explanation that her husband belonged to Dammapeta Mandal which was within the jurisdiction of the Tahsildar, sathupalli at one point of time, the Tahsildar, Aswaraopet at another time and later the MRO Dammapeta, whereas he was posted as Doctor at Wyra and therefore obtained community certificate from that office too. The appellant specifically pointed out a Tribal professional working at various places may be constrained to obtain community certificates from competent authorities at various places and that cannot be a circumstance for doubting the certificate.
- f) The respondent wrongly construed the Judgment in (1976) 3 SCC 411 as being applicable only to a case of conversion whereas it is an authority for the proposition that acceptance by the community is the supreme test when it is doubted whether a person belongs to the community. The appellant has placed before the respondent plentiful evidence of such acceptance.
- g) Any other ground that may be taken at the hearing of the case.

3. The Government have admitted the appeal petition while rejecting the stay and called for the parawise remarks and connected records from the District Collector and Magistrate, Khammam vide Government Memo dated 18.5.2007.

4. Smt. Tellam Suneetha, has filed W.P. No. 23692 of 2007 before Andhra Pradesh High Court, Hyderabad, against the Government Memo dated 18.5.2007, for rejection of stay petition by the Government. The Andhra Pradesh High Court, Hyderabad, in its order dated 13.11.2007 made as follows no penal action should ever be taken against the petitioner only on the basis that her social status claim as a member belonging to Schedule Tribe is negatived, pending further orders in this Writ Petition. Further in WPMP. No. 30849 of 2007 in W.P. No. 23692 of 2007 dated. 19.01.2009 the Hon'ble High

Court has made the following orders. "there shall be interim stay of operation of the order dated.1.4.2007 passed by the 2nd respondent District Collector, Khammam and the petitioner shall be continued in service until further orders".

5. In the reference 5th read above the District Collector, Khammam was requested to file a Counter affidavit before the Hon'ble High Court on the WP No.23692/07 filed by Smt Tellam Suneetha.

6. In the reference 6th read above the District Collector, Khammam has furnished parawise remarks along with the connected records, which are as follows:

A&b) During the enquiry the District Level Scrutiny Committee examined the documents produced by the appellant and after having heard the oral evidence of the appellant and referring the literature on customs and traditional habitat of Koya community the committee gave the benefit of doubt that her father is a ST though she could not produce any concrete proof except the ST certificate issued by Tahsildar, Yellandu and she herself admitted that her mother's caste is not known and in which case it can only be treated as a non tribal. Therefore the appellant is an offspring of inter caste marriage and from analyzing her brought up and marriage performance of the appellant, it is beyond doubt that the appellant does not belong to ST (Koya) community and the caste certificate obtained by the appellant is liable for cancellation. Further the Tahsildar issued the caste certificate basing on the approved list of the APPSC only.

c) The appellant has submitted a copy of the ST caste certificate issued by the Tahsildar, Yellandu to her father. She did not submit any documentary evidence about her mother. She submitted that her mother is an orphan whose parents were not known and who brought up is in orphanage. As per section 6 of Act 16 of 1993 the burden of proof of her caste is claimed up by her only. She has to prove her caste as claimed.

d&f) As per G.O.Ms. No. 371, SWD, dated. 13.4.1976. when the marriage is in inter caste marriage, as in this case between a tribal father and non-tribal mother the offspring could get the caste status of the father provided the marriage was solemnized as per the tribal customs, the couple with their off spring were accepted by the community and off spring grow up according to the customs and traditions of the Tribal community. Where as in this case it is clear that the appellant claims that her father married her mother who was an orphan at Pramasamajam, Visakhapatnam, and claims it as a Adarsha Vivahamu. There after she was born at Warangal and brought up at Warangal, Kesavapatnam of Karimnagar which is not a traditional habitat of the Tribals. It is bounded duty of the scrutiny committee in the interest of natural justice and principle of equity to go beyond the documentary evidence and examining the anthropological and ethnological traits, deity, rituals customs mode of marriage, death ceremonies/ method of burial of dead bodies of that particular tribe, to finalize its recommendations to the competent authority. The committee examined the respondent on the above aspects and recorded her statement. The contents of her statements are as per the customary rights, marriages to Koyas takes place at bridegroom residence. Maternal uncle will carry the bride to the dais of marriage. In the first instance the bridegroom will sit in the dais and later the bride will be taken to the bridegroom. After completion of the marriage non-vegetarian food will be served. The important festival observed by the Koya community is "Sammakka, Sarakka" "Muthyalamma" Kothalapanduga". According to the book of the Koyas of A.P. published by TCR & TI, Hyderabad in 1966, the oral evidence given by the appellant regarding her own marriage is that

“She got married at Warangal in Sivanagar. Her marriage was performed in her house by way of Tali and it was solemnized by purohiths. After the marriage non-vegetarian food was provided to the persons visited to the marriage. As per the customary rights, marriages of Koyas takes place at bridegroom residence. Maternal Uncle will carry the bride to the dais of marriage. In the first instance the bridegroom will sit in the dais and later the bride will be taken to the bridegroom. It is clear that the appellant was born and brought up in the places which are not traditional habitat of Koya tribe.

The appellant has obtained the first caste certificate from MRO., Kesavapatnam of Karimnagar District, which is not a Scheduled Area. When the appellant claims her in laws are resident of Ankampalem (V) of Dammampeta Mandal of Khammam, where as her husband namely K. Singaraju has obtained caste certificates as ST Koya from Wyra Mandal of Khammam District which is also not notified as Scheduled Area. The appellant is an off spring to tribal father and non-tribal mother. According to oral evidence adduced before Committee about her marriage has not been performed as per the tradition of the tribal community and customs as described Supra. The most important point is that the way appellant narrated her marriage and the actual Koya tradition shows that it is exactly the opposite i.e. the appellant got married as per typical Hindu tradition but not as per the tradition of Koya.

The paternal uncle of the appellant got married to a lady who belongs to “Kapu” community and his son and daughter also got married the person belonging to kapu community. With this it is clearly understood that the paternal uncle’s family of the appellant do not follows the customs and tradition of the tribal community. Upon perusing the documents produced by the appellant and after having hard the oral evidence of the appellant and referring the literature on customs and tradition habitat of Koya community the committee gave the benefit of doubt that her father is a ST, though she could not produce any concrete proof except ST certificate.

e) Sri Koram Singaraju R/o Ankampalem who is husband of the appellant has taken ST caste certificate from the various competent authorities in the District. It is not evident to prove her caste as claimed. As per section 6 of AP (SC, ST & BC) Regulation of issue of community certificate Act 16/93 the burden of prove of her caste as claimed up her only. She has not submitted any evidence that his father belongs to Koya as claimed.

7. In the reference 8th read above Smt Tellam Suneetha has requested the Government to finalize her appeal petition which is pending before the Government, due to which she is not getting further promotions. She has also stated that is the appeal petition is finalized by the Government, she could withdraw the WP No.23692/2007 pending before the APHC, Hyderabad. Accordingly Government heard the appeal petition of Smt. Tellam Suneetha on 06.04.2011.

8. In the reference 11th read above, the Hon’ble High Court of AP in its judgment dated.7.4.2011 has ordered that the WP No.23692/2007 filed by Smt Tellam Suneetha is dismissed as withdrawn and the Interim Order dated 19.1.2009 granted in WPMP No.30849 in the WP in question was stands annulled.

9. In the reference 13th read above, on the interim appeal filed by Smt. Tellam Suneetha, Government have stayed the proceedings of the District Collector, Khammam, dated. 1.4.2007 pending finalization of her appeal petition.

10. Government after careful examination of records and proceedings dt.1.4.2007 of the District Collector, Khammam and grounds and written arguments submitted by the appellant it is learnt that as per her service register and other documents the father of applicant belongs to ST community. Though, performance of the marriage of the applicant suit to modern life, it is possible that a member of ST may in course of time adopt such a customs and practices in vogue among the Hindus. It is depend upon the circumstances and different considerations. Mere performance of marriage ceremony or adopting ceremonies under other's customary would not be enough to remove them from the fold of the original Tribal Caste. It is not disputed that the appellant has born to a ST community person and at any point, the caste will not be changed, if the place of residence is changed. If an inter-caste marriage is performed between a Tribal father and a non tribal mother, the off spring could get the caste status of her father, if the off spring were accepted by the community and grow up according to their customs. Several ST Associations and elders of Koya community have also accepted that the appellant belongs to ST community.

11. After careful consideration of the entire material made available/the documentary evidence i.e. certificates issued by the village elders, local MLA, various Associations of Tribes and after hearing the oral evidences and referring to the literature on customs and habits of koya community, it is decided that the issue of community certificate to the appellant by the MROs concerned are in accordance with the rules. Hence in exercise of the powers conferred under section 7(2) of the Andhra Pradesh (Scheduled Castes, Scheduled Tribes and Backward Classes) Regulation of Issue of Community certificates Act 1993(A.P Act No16 of 1993), the appeal petition filed by Smt. Tellam Suneetha W/o Dr. K. Singaraju is hereby allowed by upholding the ST community certificate issued to Smt. Tellam Suneetha and the orders issued by the Collector, Khammam in Proceedings No. D3/2373/2006 dated. 1.4.2007 are hereby set aside.

12. The District Collector, Khammam shall take necessary action in the matter.

13. The records (containing c.f and n.f :01 to 458 pages) received from the District Collector, Khammam, through 6th read above, are returned herewith in original to District Collector and he is requested to acknowledge the receipt of the same, immediately.

(BY ORDER AND IN THE NAME OF THE GOVERNOR OF ANDHRA PRADESH)

Dr.A.VIDYASAGAR
PRINCIPAL SECRETARY TO GOVERNMENT

To
The Collector, Khammam District (with original records)

Smt. Tellam Suneetha, W/o Dr.K.Singaraju,
Pharmacist, H.No. 6-2-46/C/1
Jammibanda,
Khammam District.

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Copy to:

P.S. to M (TW)
P.S. to Principal Secretary (TW)
SF/SC.

// Forwarded :: By Order //

SECTION OFFICER.